

# PLANNING ADMINISTRATION POLICY

July 2023



### 1. PURPOSE

The purpose of this policy is to provide a consistent and transparent framework for the operation and processing of planning applications lodged with Council.

This policy supersedes any previous policy regarding the nominated matters.

### 2. SCOPE

This policy applies to all applications submitted for approval to Council (as the Planning Authority) under the provisions of the *Land Use Planning and Approvals Act 1993*.

This policy will be reviewed periodically to provide currency with best practice, risk assessment and legislative changes.

This policy has been drafted to accord with the Good Governance Principles under Council's Governance Framework.

### 3. LEGISLATION

This policy relates to Council's functions and powers under the:

- Land Use Planning and Approvals Act 1993
- Tasmanian Civil and Administrative Tribunal Act 2020
- Local Government Act 1993
- Local Government (Building and Miscellaneous Provisions) Act 1993

### 4. DEFINITIONS

The definitions of terms used in this policy are set out below.

Term	Meaning.
Appeal Tribunal	means the Tasmanian Civil and Administrative Tribunal
Applicant	the person nominated on the <i>application</i> form, or in the application documentation, as the applicant for a permit
LUPAA	Land Use Planning and Approvals Act 1993
Owner	as defined in the Land Use Planning and Approvals Act 1993

## **5. POLICY**

### **5.1 APPLICATIONS SUBJECT TO AN ADDITIONAL INFORMATION REQUEST**

This policy applies to all planning applications submitted to Council where additional information has been requested in accordance with Section 54 of LUPAA.

#### **5.1.1 LEGISLATIVE REQUIREMENTS**

Council is required to determine an application for a planning permit within the statutory time periods nominated under LUPAA.

Applications for a discretionary permit (one that may be approved, with or without conditions, or refused) are made under Section 57 of LUPAA. Applications for permitted permits (which may be approved with or without conditions, but not refused) are made under Section 58 of LUPAA. Section 81 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* requires that subdivisions are subject to a permit under LUPAA and that a planning scheme may determine when a subdivision is considered an application for a discretionary permit or a permitted development permit.

Under Section 54 of LUPAA, Council can require the applicant to provide it with additional information before it considers the application. If Council requires the applicant to provide it with additional information, the relevant statutory period does not run, until the request for information has been satisfactorily answered.

If additional information is not provided in accordance with the request, within 2 years (or a longer period agreed by the applicant and the planning authority) after the request is made, the application for a permit will lapse in accordance with Section 54(2AA) of LUPAA.

#### **5.1.2 OPERATION**

When the further information is originally requested, the applicant is to be advised of the legislative requirements and the operation of this policy.

Despite this, if the additional information request has not been satisfied, Council will, as soon as practicable after a period of 18 months, write to the applicant advising:

- that they have up to two years from the date of the original request to provide the additional information required, or their application will lapse.
- that they may request, in writing, the agreement of Council to extend the two-year period for a mutually agreeable period. This request is to be made prior to the expiry of the two-year period, or their application will lapse.
- no application fees will be refunded if the application lapses (advertising fees will be refunded if unused), and
- if the application is withdrawn by request prior to determination, a partial refund of fees may be available (dependent upon Council's adopted fee structure at the time).

Following this notification, if the two-year period expires and neither the additional information has been satisfied, nor a further period has been requested and/or agreed, Council will then write to the applicant and advise that the application has lapsed.

### 5.2 “NOT VALID” APPLICATIONS MISSING MANDATORY INFORMATION

This policy applies to all planning applications submitted to Council where mandatory information has not been provided, and the application is considered not valid.

#### 5.2.1 LEGISLATIVE REQUIREMENTS

As discussed in 5.1.1 above, Council is required to determine an application for a planning permit within the statutory time periods nominated under LUPAA.

While Section 51(1AB) of LUPAA does not permit Council to refuse to accept a valid application unless the required owner notification declaration, or consent under Section 52 of LUPAA (if the land is owned or administered by the Crown or Council), is not included.

However, Section 51(1AC) of LUPAA provides that a valid permit application must contain all relevant information required by the planning scheme. Section 86 of LUPAA also states that an application is not valid unless fees for the application have been paid if demanded within the timeframe outlined in Section 51A of LUPAA.

Once the planning authority is satisfied that all information has been provided to satisfy these sections of the Act, and the relevant fees for the application have been paid, the application is considered to have been received and the statutory timeframe for assessment commences.

Distinct from applications discussed in 5.1 above, until the application is made valid, the statutory timeframe for assessment does not begin and the planning authority is unable to formally request further information under Section 54 of LUPAA.

#### 5.2.2 OPERATION

When an application is first lodged, Council notifies the applicant of any missing mandatory information, and issues an invoice for fees within the required timeframe. However, an issue arises when this information and/or fees are not provided within a reasonable timeframe despite this request. As the application is not valid, there is no statutory process.

If an application remains not valid 18 months after the initial lodgement of documents, and no timeframe for the provision of this information has been agreed, Council will, as soon as practicable, write to the applicant again requesting the mandatory information and seek confirmation that the applicant still wishes to proceed with the application. At this time, the following advice will also be provided:

- that the applicant has two years from the date of initial lodgement to provide the mandatory information required, or agree to an alternative timeframe with Council, or their application will be returned.

- no application fees will be refunded if the application is returned (advertising fees will be refunded if not used).
- if the application is withdrawn by request prior to determination, a partial refund of fees may be available (dependent upon Council's adopted fee structure at the time).

Following this notification, if no response has been received after the two-year period, or a further timeframe agreed, the application will be cancelled and documentation returned.

### **5.3 ASSESSMENT OF APPLICATIONS WHERE COUNCIL IS THE APPLICANT OR LANDOWNER**

This applies to all planning applications where Council is the applicant, or the proposal is on land owned by, or administered by, Council, and representations are received during a period of public notice.

#### **5.3.1 LEGISLATIVE REQUIREMENTS**

Section 52(1B) of LUPAA requires that if the land in respect of which a permit is required, is owned or is administered by Council and a planning scheme does not provide otherwise, the application must be signed by the General Manager (or delegate) and be accompanied by the written permission of General Manager (or delegate) to the making of the application.

#### **5.3.2 OPERATION**

To manage any perception of conflict of interest and ensure the development process is undertaken in a transparent and unbiased manner, the planning assessment will be undertaken by an independent planning consultant.

The General Manager, at their discretion, may engage the services of an independent planning consultant to assess a proposal where no representations are received.

### **5.4 APPEALS WHERE THE DECISION OF COUNCIL IS CONTRARY TO THE RECOMMENDATION**

This applies to all planning applications where the decision of Council (as the Planning Authority) is contrary to the recommendation and/or qualified advice.

#### **5.4.1 LEGISLATIVE REQUIREMENTS**

Section 61 of LUPAA allows for an appeal to be made to the Appeal Tribunal against a planning decision by either an applicant or any person who has made a representation (if the decision is made under Section 57 of LUPAA).

Section 7 of Part 8 of Schedule 2 of the *Tasmanian Civil and Administrative Tribunal Act 2020* provides that Council, when acting as the body who made the decision, is automatically a party to any appeal arising from the decision.

Section 65 of the *Local Government Act 1993* requires that any advice provided to Council, as part of its deliberations, is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

### 5.4.2 OPERATION

Where the decision to grant or refuse a planning permit is required to be made at a Council meeting, an assessment report and recommendation to approve, approve with conditions, or refuse the application will be provided by a planning officer through the Executive Manager Development and/or General Manager, together with the supporting application documentation. Council may determine the application as per the recommendation or, alternatively, put forward an alternate motion. This may result in the application being approved or refused, or approved with different conditions, contrary to the recommendation.

Where an appeal arises from a decision of Council, and the decision is contrary to the planner's recommendation, Council will be represented at the appeal by a legal advocate as necessary and planning evidence will be provided by an independent planning consultant.

This is to ensure that Council is adequately represented, and that a decision can be appropriately defended. In this situation, it would be unethical for Council's planner to have to provide evidence that was contrary to their professional advice.

### 5.5 REPRESENTATION AT APPEALS WHERE THE APPEAL PROCEEDS TO A FULL HEARING

This applies to all planning applications where an appeal against a decision of Council is instituted.

#### 5.5.1 LEGISLATIVE REQUIREMENTS

As discussed in 5.4 above, an applicant or representor may appeal against the decision of Council through the Appeal Tribunal. If an appeal is unable to be resolved by mediation, then the parties will proceed to a full hearing where all parties may present evidence to an expert panel.

#### 5.5.2 OPERATION

At the discretion of the General Manager, dependent upon the nature of the matters raised through the appeal, Council may be represented by a legal advocate, as necessary.

When a matter proceeds to a full hearing before the Tasmanian Civil and Administrative Appeal Tribunal, Council will be represented by a legal advocate, as necessary, to enable evidence to be presented appropriately.

### 5.6 REPRESENTATION AT OTHER RELEVANT PLANNING HEARINGS

This applies to all other planning applications or matters which may be the subject of public hearings through a Tribunal, Commission, Development Assessment Panel or any Court or other body of competent jurisdiction.

#### 5.6.1 LEGISLATIVE REQUIREMENTS

LUPAA provides for different planning assessments to be determined through the operation of the Tasmanian Planning Commission, a Development Assessment Panel and the Tasmanian Civil and Administrative Tribunal. These assessments usually involve a public hearing and submission process. In addition, in some cases, further relief may be sought through a Court or other body of competent jurisdiction.

#### 5.6.2 OPERATION

Without limiting an individual's right to be legally represented, at the discretion of the General Manager, dependent upon the nature of the matters and hearing procedure, Council may be represented by legal counsel, as necessary.

### 6. RELATED DOCUMENTS

- Governance Framework